128

(1)

Supreme Court, U.S.
FILED

No. _____

081417 MAY 13 2009

OFFICE OF THE CLERK

In The

Supreme Court of the United States

RAMON MORALES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR WRIT OF CERTIORARI

B. ALAN SEIDLER
Attorney for Petitioner
580 Broadway
New York, NY 10012
212-334-3131

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

1. Did the District Court's Charge to the jury on Count One [21 United States Code § 846] violate petitioner's Fifth Amendment right to Due Process, and to be charged by a Grand Jury?

TABLE OF CONTENTS

	Page
Question Presented	i
Table of Authorities	iii
Opinion Below	1
Jurisdiction	1
Constitutional & Statutory Provisions	1
Statement of the Case	2
Reason for Granting the Writ	8
Conclusion	12

TABLE OF AUTHORITIES

Page

FEDERAL CASES

Central Trust Company v. Official Creditor's Committee of Geiger Renterprises, Inc., 454 U.S. 354 (1982) 11

Connecticut National Bank v. Germain, 503 U.S. 249 (1992) 11

United States v. Clemente, 22 F.3d 477 (2d Cir. 1994) 8, 10

United States v. Gonzalez, 520 U.S. 1 (1997) 11

United States v. Mucciante, 21 F.3d 1228 (2d Cir. 1994) 9

United States v. Rodriguez, 178 S. Ct. 1783 (2008) 11

United States v. Roshko, 969 F.2d 1 (2d Cir. 1992) 8, 10

United States v. Whitley, 529 F.3d 150 (2d Cir. 2008) 11

FEDERAL STATUTES

18 U.S.C. § 2 2

21 U.S.C. § 812, 841(a)(1) and 841(b)(1)(B) 2, 3, 8

21 U.S.C. § 841(b)(1)(A) 2, 3, 8

21 U.S.C. § 846 ..... 2, 8

28 U.S.C.A. § 1254 1

OPINION BELOW

The Summary Order of the United States Court of Appeals for the Second Circuit, Dated March 18, 2009, is submitted herewith as *Schedule "A"*.

JURISDICTION

This matter is On Writ of Certiorari to the United States Court of Appeals for the Second Circuit. The Judgment of that Court was entered March 18, 2009.

The statutory provision conferring upon this Court jurisdiction to review the Judgment of the Court of Appeals by Writ of Certiorari is 28 U.S.C.A. § 1254.

CONSTITUTIONAL & STATUTORY PROVISIONS

1. Petitioner was denied Due Process of Law pursuant to the dictates of the Fifth Amendment to the United States Constitution which states in relevant part:

> "No person shall be held to answer . . . , nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

STATEMENT OF THE CASE

This matter was on direct appeal to the United States Court of Appeals for the Second Circuit from a Judgment of the United States District Court for the Southern District of New York (Koeltl, J.). The District Court Judgment was entered on or about November 30, 2007. Petitioner was convicted following a jury trial of the 2 Counts of the Indictment. Count One charged a conspiracy to distribute, and possess with the intent to distribute one kilogram and more of heroin [21 U.S.C. § 846, 812, 841 (a)(1) and 841(b)(1)(A)]. Count Two charged possession with the intent to distribute approximately 500 grams and more of heroin [21 U.S.C. § 812, 841(a)(1) and 841(b)(1)(B), and 18 U.S.C. § 2]. The District Court determined the appropriate advisory Sentencing Guideline Total Offense level to be 36, at Criminal History III; a sentencing range of 235-293 months.

The Government filed two Prior Felony Informations pursuant to 21 U.S.C. § 841(b)(1)(A), against petitioner. Consequently, the mandatory minimum sentence on Count One was 240 months incarceration, and the minimum was 10 years incarceration on Count Two. Petitioner was sentenced to 240 months incarceration on Counts One and Two to run concurrently, a supervised release term of 10 years on Count One, 8 years on Count Two to run concurrently, and a $200 special assessment.

In a Summary Order dated March 18, 2009, the Second Circuit Court of Appeals ruled the District

Court did not amend the Indictment by charging the jury could convict petitioner on the conspiracy count if it found that petitioner conspired to achieve either one of the two objectives of the conspiracy that were charged conjunctively in the Indictment. On this issue petitioner seeks a writ of certiorari.

In a separate Summary Order, dated March 18, 2009, the Second Circuit Court of Appeals remanded the case to the District Court to determine (1) whether this petitioner understood the citation to 841(b)(1)(B) and absence of a citation to 841(b)(1)(A) as an indication that the government had elected not to seek Section 841(b)(1)(A)'s higher mandatory minimum; and (2) if so, whether, petitioner's misapprehension adversely affected trial strategy or triggered a decision to go to trial rather than accept or seek a plea bargain.

Based on information provided by recently arrested, and subsequent cooperator Lenny Jimenez, on June 1, 2004, the premises at 8302 Dongan Avenue, Queens, New York were searched. Inside the house were found approximately 25 kilograms of heroin; more than 5 kilograms of cocaine; $18,000 in currency; drug paraphernalia; and cell phone documents. Jimenez and one Oswaldo Ramirez had been arrested at the George Washington Bridge traveling from New Jersey to New York City in possession of 2.5 kilograms of heroin, concealed in two pairs of boots, that was intended to be delivered to Jaime Londono at the Dongan Avenue address.

Jimenez became a drug courier for Londono in 2002, and made at least 4 trips to Houston to pick up narcotics, and deliver cash. Between 2003-June 1, 2004, Jimenez worked full-time for Londono's drug business. For the most part the heroin transported by Jimenez was concealed in car mats, shoes and boots, and inside Benetton luggage. The mats, shoes and boots were then taken to Dongan Avenue for extraction of their contents. Jimenez also picked up narcotics from couriers arriving from Colombia, Mexico and Guatemala. All the heroin carried by Jimenez was secreted at Dongan Avenue, and then "cut" and packaged there.

As part of Jimenez's duties he would also deliver drugs to some of Londono's customers such as Menor, Ray, Juancho, Alex, Cabezon, Luis, and Hector. Jimenez stated petitioner was one of Jimenez's customers.

When Jimenez was arrested, and de-briefed by agents, he lied, and did not mention that his brother-in-law was also his co-worker in the Londono drug operation. While Jimenez earned over $100,000 from his drug activities, and $80,000 was found in his apartment after he was arrested, cooperator Jimenez was not subject to forfeiture of any money as part of his cooperation agreement with the federal authorities in New Jersey. Furthermore, while Jimenez was involved in illegal activity involving more than 200 kilograms of heroin, his plea/cooperation agreement provided that he would be punished based on relevant conduct of only 10-30 kilograms of heroin. Jimenez's total offense level was fictitiously measured

at 31, with a prison range of 108-135 months, even before USSG § 5K1.1 consideration. Despite the fact that Jimenez's criminal conduct involved violating the law in New York, and multiple other states other than New Jersey, Jimenez was only required to plead guilty in New Jersey to cover his criminal conduct everywhere.

After Jimenez's arrest on June 1, 2004, the agents set up a potential controlled delivery of the 2.5 kilograms of heroin to Londono at Dongan Avenue. Jimenez knew that delivery would not result in Londono's capture, because in reality it would warn Londono to stay away from Dongan Avenue, or risk arrest. When Londono arrived at Dongan Avenue expecting to meet with Jimenez who was arriving by car from New Jersey, Londono fled the area when he was not able to observe Jimenez's car parked in the vicinity of the Dongan Avenue apartment.

As the result of a wiretap on Londono's cell phones, 4 drug couriers were arrested.

On June 21, 2005, a Londono "stash" apartment at 41-43 Case Street was searched, and 4 kilograms of heroin were seized. Some heroin was found in shoes with cut open soles.

Between March, 2005-April, 2005, cell phone calls between petitioner and Londono were intercepted.

On March 16, 2005, petitioner was arrested and a personal use amount of heroin [9.5 total grams],

and an amount of currency were seized. However, petitioner was not then charged with any offense.

On April 28, 2005, pursuant to additional information from a case informant, law enforcement agents set up surveillance in the vicinity of Lawrence Avenue, Bronx, New York. At approximately 6:00 PM, petitioner was seen in a dark colored Maxima. Londono exited the informant's car, and walked toward petitioner's Maxima and entered the Maxima. Londono remained in the Maxima for a short time, and then walked back to the informant's car. The informant then telephoned the agent, and the agent's group arrested petitioner. On April 28, 2005, a package containing 498.4 grams of heroin was found inside petitioner's vehicle. On April 28, 2005, a package containing 498.4 grams of heroin was found inside petitioner's vehicle.

After his arrest, petitioner gave his consent to search his residence on Lawrence Avenue. Inside the house $40,000 in wrapped cash was found in a shoe box. A white, unknown type of powder was found in the bedroom. After being arrested petitioner advised the agents he had purchased an amount of heroin from Londono 3 or 4 times in the past, and the cash found in the apartment belonged to Londono, who had the day before asked petitioner to safeguard the money.

Cooperator Edinson Belalcazar also transported shoes filled with heroin for Londono from Houston, Texas, to New York beginning in 2002, and continuing

through 2004. Commonly, 500 grams of heroin were contained in each shoe. During this period Belalcazar made more than 60 narcotics trips for Londono, and on 5-7 occasions he took cash to Houston for Londono. In fact, on one occasion Houston police seized $7,900 from Belalcazar, and then Belalcazar subsequently brought a fraudulent legal action to recover said money, alleging the $7,900 were legitimate funds, and not drug money.

In 2004, Belalcazar was promoted by Londono, and his new role was to pick up heroin from arriving couriers in New York, and then bring the shoes, Benetton suitcases, or pellets containing the heroin, to a stash house on Case Street. Belalcazar earned $1000 per pick up.

None of the money earned in the drug trade by Belalcazar was reported as income to the Internal Revenue Service, nor was repayment of any money in excess of $7000, a condition of his plea agreement. Belalcazar claimed that many payments by petitioner to Londono contained petitioner's receipts for the amounts tendered, but even though the actual payments were less than the receipts, illogically Londono would destroy the receipts before he counted the cash.

Belalcazar was arrested for his drug activity in July, 2005. Belalcazar entered the United States illegally. He became a citizen in 1999, with the help of his wife, who he then divorced after he was granted citizenship. Belalcazar's first proffer with the Government took place on July 27, 2005, and he had 4

proffers thereafter. It was not until later that Belalcazar remembered 45 additional narcotics transportations he made from Houston to New York City for Londono. Despite claiming frequent contact with petitioner, in actuality, Belalcazar did not know petitioner's name, or where he lived. Belalcazar had no drug records reflecting petitioner's alleged regular drug transactions. None of the code words allegedly used by Londono for heroin, as testified to by Belalcazar at petitioner's trial, were contained in the recordings of the telephone calls between petitioner and Londono.

REASON FOR GRANTING THE WRIT

The District Court amended Count One of the Indictment to charge alternate theories of proof as being sufficient to convict, rather than the subjunctive requirement actually returned by the grand jury in Count One.

When an Indictment is amended outside of the grand jury process, it constitutes a per se violation of the Fifth Amendment right to be indicted by a grand jury, see *United States v. Roshko,* 969 F.2d 1, 5 (2d Cir. 1992), which "requires reversal even without a showing of prejudice to the defendant." *United States v. Clemente,* 22 F.3d 477, 482 (2d Cir. 1994).

Count One reads in relevant part [21 U.S.C. §§§ 812, 846, 841(b)(1)(A)]:

> ". . . the defendants, and others known and unknown, unlawfully, intentionally, and knowingly would and did distribute, and possess with the intent to distribute, a controlled substance, to wit 1 kilogram and more of mixtures and substances containing a detectable amount of heroin,. . . ."

Over petitioner's repeated objections the Court charged the jury with regard to this element of Count One as follows [584-5]:

> ". . . In this case Count One of the indictment charges the following objects of the conspiracy: One, the distribution of heroin, and two, the possession of heroin with the intent to distribute, and the possession of heroin with the intent to distribute it. . . ."

> ". . . Although there are two objects charged in the indictment the government need not prove both objects beyond a reasonable doubt, and an agreement to accomplish either of these objectives is sufficient. . . . However, if you find that a conspiracy existed and that the conspiracy had either of the two charged objects, namely, the distribution of heroin or the possession of heroin with the intent to distribute it the illegal purpose element will be satisfied."

The Court unconstitutionally amended the Indictment for its own purposes. Once the grand jury returns an Indictment, only the grand jury may lawfully amend that Indictment. *United States v. Mucciante,* 21 F.3d 1228, 1233 (2d Cir. 1994). When

an Indictment is amended outside of the grand jury process, it constitutes a per se violation of the Fifth Amendment right to be indicted by a grand jury, see *United States v. Roshko,* 969 F.2d 1, 5 (2d Cir. 1992), which "requires reversal even without a showing of prejudice to the defendant." *United States v. Clemente,* 22 F.3d 477, 482 (2d Cir. 1994).

The Indictment returned by this Grand Jury specifically charged in the conjunctive; the possession of heroin with the intent to distribute it, and the distribution of heroin. However, the Court's charge directed an either/or finding as being sufficient.

To make the Court's charge to the jury proper the Indictment must state as sufficient to find guilt the distribution of heroin, *or* the possession of heroin with the intent to distribute it. The instant Grand Jury Indictment was not vague. The Grand Jury Indictment was exact, and specific as to the required allegations of criminality in Count One. The English language should retain clear meaning. Nuanced interpretations of plain English to give new meaning to common words cannot be excused. Words have meaning. The Court's charge improperly amended Count One to make conviction of petitioner easier for the Government to obtain. The charge of the Court was erroneous, and petitioner was prejudiced by the acts of the District Court.

The Second Circuit Court of Appeals holding herein was as follows:

> "The disputed charge was correct because 'the government needed only to prove agreement on one of the objectives charged in the indictment in order to establish that conspiracy existed. . . .'"

Said holding contradicts a bedrock principle of statutory interpretation. Statutes should be read literally, and the plain meaning of words Congress has used should be applied. See, e.g., *Connecticut National Bank v. Germain,* 503 U.S. 249, 253-254 (1992); *Central Trust Company v. Official Creditor's Committee of Geiger Renterprises, Inc.,* 454 U.S. 354, 359-60 (1982). The Supreme Court has reversed courts of appeals for not giving a literal reading to a statute. See, *United States v. Rodriguez,* 128 S. Ct. 1783, 1788 (2008); *United States v. Gonzalez,* 520 U.S. 1, 8 (1997). Court's must "give statutes a literal reading and apply the plain meaning of the words Congress has used." *United States v. Whitley,* 529 F.3d 150, 156 (2d Cir. 2008), *panel reh'g denied,* 540 F.3d 87 (as amended Oct. 8, 2008).

The Indictment returned by this Grand Jury specifically charges in the conjunctive; the possession of heroin with the intent to distribute it, and the distribution of heroin. The statute requires both objectives to be proven in order to establish the charged conspiracy existed. The failure of the District Court to so instruct the jury denied petitioner the right to due process of law, and the right to be indicted by a Grand

Jury, pursuant to the Fifth Amendment to the United States Constitution.

CONCLUSION

For the foregoing reason a writ of certiorari should issue to review the judgment of the United States Court of Appeals for the Second Circuit.

DATED: May 13, 2009.

Submitted by,

B. ALAN SEIDLER, ESQ.
Attorney for Petitioner
580 Broadway
New York, New York 10012
212-334-3131

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

(Filed Mar. 18, 2009)

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT HTTP://WWW.CA2.USCOURTS.GOV/). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF

THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 18th day of March, two thousand and nine.

Present: ROSEMARY S. POOLER,
SONIA SOTOMAYOR,
Circuit Judges,
BARBARA S. JONES,*
District Judge.

UNITED STATES
OF AMERICA,

Appellee,

-v-

RAMON MORALES and
LUIS OROZCO-CASTANOS,

Defendants-Appellants.

07-4202-cr (L);
07-5529-cr
(Con)

ISSUED AS MANDATE:
April 16, 2009

---

* The Honorable Barbara S. Jones, United States District Court Judge for the Southern District of New York, sitting by designation

Appearing for Appellants: B. Alan Seidler, New York, NY, *for defendant-appellant Morales*; Norman Trabulus, New York, NY, *for defendant-appellant Orozco-Castanos*.

Appearing for Appellee: Nicole W. Friedlander, Assistant United States Attorney for the Southern District of New York, New York, NY, for Lev L. Dassin, Acting United States Attorney (Katherine Polk Failla, Assistant United States Attorney, *on the brief*).

Appeal from the United States District Court for the Southern District of New York (Koeltl, *J.*).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of said District Court be and it hereby is **AFFIRMED** in part and this matter **REMANDED** in part.

Ramon Morales appeals from a judgment convicting him of (1) conspiracy to distribute and possess with the intent to distribute one kilogram or more of heroin, and (2) possession with the intent to distribute of 100 grams or more of heroin. Morales received a sentence of 240 months' imprisonment. In this order, we explain our reasons for affirming Morales's conviction. We also grant a motion made pursuant to *Anders v. California,* 386 U.S. 738 (1967), by the attorney for Luis Orozco-Castanos and the government's motion for summary affirmance. In an accompanying per curiam, we remand for findings relevant to Morales's sentence. We assume the

parties' familiarity with the facts, proceedings below, and specification of issues on appeal.

A jury's verdict may be set aside as supported by insufficient evidence only if no "rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia,* 443 U.S. 307, 319 (1979). [I]n reviewing such a claim, the evidence is viewed in the light most favorable to the prosecution, and reasonable inferences and credibility determinations are to be drawn in its favor." *United States v. Pipola,* 83 F.3d 556, 564 (2d Cir. 1996) (internal citation omitted). Morales's conviction for possession with intent to distribute 100 grams or more of heroin was amply supported by law enforcement agents' discovery of 500 grams of heroin in Morales's car and by his own admissions. The conspiracy conviction also was well supported. Co-conspirators testified to Morales's acceptance of and payment for far more than one kilogram of heroin. One of the co-conspirators also testified that he had been introduced to Morales by Jaime Londono, the leader of the conspiracy, as the person who would now be making deliveries to Morales. The co-conspirators' testimony was corroborated by Morales's admissions; intercepted phone calls between Londono and Morales; and money and heroin seized from Morales's residence and car, which were packaged in the way that the co-conspirators described. We, therefore, affirm the District Court's denial of Morales's Federal Rule of Criminal Procedure 29 motion.

Morales also contends that the District Court constructively amended the indictment by charging that the jury could convict Morales on the conspiracy count if it found that Morales conspired to achieve either one of the two objectives of the conspiracy that were charged conjunctively in the indictment. The disputed charge was correct because "the government needed only to prove agreement on one of the objectives charged in the indictment in order to establish that a conspiracy existed." *United States v. Berger*, 224 F.3d 107, 113 (2d Cir. 2000); *cf. United States v. Rioux*, 97 F.3d 648, 661-62 (2d Cir. 1996) (holding that a substantially similar charge did not constructively amend the indictment).

We, therefore, affirm Morales's conviction. We also grant Orozco-Castano's counsel's *Anders* motion and the Government's motion for summary affirmance.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By: /s/ [Illegible]

UNITED STATES DISTRICT COURT

SOUTHERN District of NEW YORK

UNITED STATES OF AMERICA	**JUDGMENT IN A CRIMINAL CASE**
V.	Case Number: S3 1:05CR00495-003 (JGK)
LUIS OROZCO-CASTANOS	USM Number: 58021-054
	AUBREY LEES Defendant's Attorney

[#07,1768 Docketed as a Judgment on 9/14/07]

THE DEFENDANT:

X pleaded guilty to count(s) ONE OF THE SUPERCEDING INDICTMENT

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
21 USC 846	CONSPIRACY TO DISTRIBUTE AND POSSESS WITH INTENT TO DISTRIBUTE HEROIN	4/30/2005	1

The defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

X Count(s) ALL OPEN COUNTS ☐ is X are dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

USDS SDNY DOCUMENT ELECTRONICALLY FILED DOC #: 112 DATE FILED: 9/7/2007

AUGUST 31, 2007
Date of Imposition of Judgment

/s/ John G. Koeltl
Signature of Judge

JOHN G. KOELTL, UNITED STATES DISTRICT JUDGE
Name and Title of Judge

9/6/07
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

135 MONTHS ON COUNT 1.

X The court makes the following recommendations to the Bureau of Prisons:

– THAT THE DEFENDANT BE INCARCERATED IN FLORIDA, SO THAT HE CAN BE CLOSE TO HIS FAMILY.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered _____ to _____ at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

5 YEARS ON COUNT 1.

– THE DEFENDANT SHALL COOPERATE WITH THE IMMIGRATION AUTHORITIES AND COMPLY WITH ALL IMMIGRATION LAWS.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two

periodic drug tests thereafter, as determined by the court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

X The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)

X The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer as and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and

13) as directed by the probation officer, the defendant shall notify third parties of risks occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

ADDITIONAL SUPERVISED RELEASE TERMS

– THE DEFENDANT SHALL PARTICIPATE IN AN ALCOHOL AFTERCARE TREATMENT PROGRAM UNDER A COPAYMENT PLAN, WHICH MAY INCLUDE URINE TESTING AT THE DIRECTION OF THE PROBATION DEPARTMENT.

– THE DEFENDANT SHALL SUBMIT HIS PERSON, RESIDENCE, PLACE OF BUSINESS, VEHICLE OR ANY OTHER PREMISES UNDER HIS CONTROL TO A SEARCH ON THE BASIS THAT THE PROBATION DEPARTMENT HAS REASONABLE BELIEF THAT CONTRABAND OR EVIDENCE OF A VIOLATION OF THE CONDITIONS OF THE RELEASE MAY BE FOUND. THE SEARCH MUST BE CONDUCTED AT A REASONABLE TIME AND IN A REASONABLE MANNER. FAILURE TO SUBMIT SO A SEARCH MAY BE GROUNDS FOR REVOCATION. THE DEFENDANT SHALL INFORM ANY OTHER RESIDENTS THAT THE PREMISES MAY BE SUBJECT TO SEARCH PURSUANT TO THIS CONDITION.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 100.00	$	$

☐ The determination of restitution is deferred until ____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage
TOTALS	$ 0	$ 0	

☐ Restitution amount ordered pursuant to plea $_____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

  ☐ the interest requirement is waived for the ☐ fine ☐ restitution.

  ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ☐ Lump sum payment of $ _____ due immediately, balance due

☐ not later than _____ , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an

assessment of the defendant's ability to pay at that time; or

F X Special instructions regarding the payment of criminal monetary penalties:

– THE SPECIAL ASSESSMENT SHALL BE DUE IMMEDIATELY.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution

interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.